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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER HEIM,

Plaintiff,

v.

JANE DOE, et al.,

Defendants.

1:20-cv-00391-AWI-GSA (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Document# 23)

On May 6, 2021, plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section § 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether Aexceptional circumstances exist, the district court must evaluate both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.

1 In the present case, the court does not find the required exceptional circumstances. At this
2 early stage in the proceedings, the court cannot make a determination that plaintiff is likely to
3 succeed on the merits. Plaintiff's third amended complaint, filed ten days ago on May 3, 2021,
4 awaits screening by the court. (Doc. 22.) Until the third amended complaint is screened and the
5 court finds that plaintiff states cognizable claims, service of process shall not be initiated upon the
6 defendants. Plaintiff's failure-to-protect claim is not complex. Moreover, based on a review of
7 the record in this case, the court finds that plaintiff can adequately articulate his claims. See id.
8 Plaintiff argues that he cannot afford counsel and his resources are limited because he is
9 incarcerated. While these conditions make litigation challenging, they do not amount to
10 exceptional circumstances under the law. Therefore, plaintiff's motion shall be denied without
11 prejudice to renewal of the motion at a later stage of the proceedings.

12 For the foregoing reasons, plaintiff's motion for the appointment of counsel is HEREBY
13 DENIED, without prejudice.

14
15 IT IS SO ORDERED.

16 Dated: May 13, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE